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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/621,817 | 07/17/2003 | Richard C. Sweeney | 47099-00135USPT | 1283 |
| 28763 | 7590 | 01/13/2006 | EXAMINER | |
| WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006 | | | MARSH, STEVEN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3632 | |
| DATE MAILED: 01/13/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,817

Applicant(s)

SWEENEY, RICHARD C.

Examiner

Steven M. Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-19 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the third office action for U.S. Application 10/621,817 for a Cup Holder Having Frustro-Conical Cavities filed July 17, 2003. Claims 1, 3-10, 12-19, and 21-23 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 27, 2005 has been entered.

Drawings

The drawings were received on October 27, 2005. These drawings are accepted.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3632

Claims 1, 3-10, 12-19, and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant claims "a concave inner facet surface" and "a convex outer facet surface" in claims 1, 3-10, 12-19, and 21-23. However, the facet surfaces shown in the figures do not appear to be concave or convex, and the term is not found anywhere in the specification. The claim is being examined without the limitations of a "convex" outer facet surface and a "concave" inner facet surface. In claims 21-23 Applicant claims "the concave inner facet surface is offset from the convex outer facet surface to define a stepped relation at the facet interface edge". The inner facet (36) and outer facet (38) meet at an interface edge (40), but there doesn't appear to be an offset or a stepped relation, nor is any such relation mentioned in the specification. Claims 21-23 have not been searched on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


Claims 1, 3-10, and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Letourneau et al. Letourneau et al. discloses a cupholder constructed of a molded fiber material that comprises a plurality of frusto-conical cavities (10) each having a curved inner wall, three holding extensions (22, generally) extending inwardly towards a center of the cavity from the inner wall and spaced equidistantly, first and second gripping flanges (see figure in previous action) having first and second gripping points at lower ends thereof (see fig. in previous action) and extending inwardly towards each other for gripping a container, and inner and outer facets, wherein the inner and outer facets have a facet interface edge therebetween; wherein the inner facets of the flanges meet at a parabolic junction along a top end thereof; wherein the holding extensions terminate at a cut-out area such that the cut-out area is below the gripping flanges; wherein the base is narrower than the mouth of the cavity and has raised portions (14) with gripping regions (16) which include support regions (18); wherein the facet interface edge joints the gripping flanges along an upper end thereof, wherein the frusto-conical shape extends from a cavity mouth at a top end of the cavity to a cavity base at a bottom end of the cavity, wherein the gripping points inherently are adapted to provide a gripping force toward each other when a container is inserted into one of the cavities, wherein the raised portion of the cavity base and the flanges of each holding extension oppose each other across a rim gripping region, wherein the cupholder/cavity of Letourneau et al. can perform all stated functions.

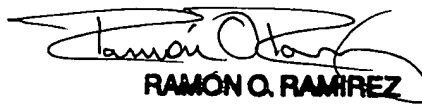
Response to Arguments

Applicant's arguments filed October 27, 2005 have been fully considered but they are not persuasive. In response to Applicant's arguments that Letourneau fails to disclose a gripping flange with a concave inner facet surface and a convex outer facet surface with a facet interface edge therebetween, it is not clear how the inner and outer facet surfaces of Applicant's gripping flanges are concave and convex, respectively, as discussed above in the rejection under section 112.

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.


Steven M. Marsh
January 5, 2006


RAMON O. RAMIREZ
PRIMARY EXAMINER